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6                   UNITED STATES DISTRICT COURT  
7                   FOR THE EASTERN DISTRICT OF WASHINGTON  
8                   AT SPOKANE

9                   ALPS PROPERTY & CASUALTY  
10                  INSURANCE COMPANY, a foreign  
11                  insurer

12                  Plaintiff,

13                  v.

14                  KIRK D. MILLER, an individual,  
15                  KIRK D. MILLER, P.S., a Washington  
16                  Professional Service corporation,  
17                  BRIAN CAMERON, an individual,  
18                  SHAYNE SUTHERLAND, an  
19                  individual,                   CAMERON  
20                  SUTHERLAND PLLC, a Washington  
21                  Professional Limited Liability  
22                  Company, ISAAC GORDON, an  
23                  individual, and ROBINHOOD  
24                  FINANCIAL LLC, a foreign Limited  
                    Liability Company,

25                  Defendants.

No. 2:22-cv-00064-TOR

26  
27                   **ALPS PROPERTY & CASUALTY**  
28                  **INSURANCE COMPANY'S**  
29                  **STATEMENT OF MATERIAL**  
30                  **FACTS IN SUPPORT OF ITS**  
31                  **MOTION FOR PARTIAL**  
32                  **SUMMARY JUDGMENT**

33  
34                  Plaintiff ALPS Property & Casualty Insurance Company (ALPS) respectfully  
35  
36                  submits the following Statement of Material Facts in support of its Motion for Partial

1 Summary Judgment.

2       1. Kirk D. Miller P.S., and Cameron Sutherland PLLC are law firms  
3 located in Spokane, Washington. Exhibit 1 and 2 to the Declaration of Stacey K.  
4 Smith.

5       2. ALPS issued a PREFERRED Lawyers Professional Liability Policy of  
6 Insurance to Cameron Sutherland PLLC, policy number ALPS22052-3 (hereinafter  
7 the “Cameron Sutherland Policy”). The Cameron Sutherland Policy was in effect  
8 from August 30, 2020, to August 30, 2021. Ex. 1 to Smith Decl.

9       3. ALPS issued a BASIC Lawyers Professional Liability Policy of  
10 Insurance to Kirk D. Miller, P.S., policy number ALPS24677-2 (hereinafter the  
11 “Miller Policy”). The Miller Policy was in effect from June 1, 2021, to June 1, 2022.  
12 Ex. 2 to Smith Decl.

13       4. On or about October 29, 2019, Isaac Gordon (Gordon) filed suit against  
14 Robinhood Financial LLC (Robinhood) alleging that Robinhood transmitted or  
15 assisted in the transmission of unsolicited text messages to Gordon in violation of  
16 the Washington Commercial Electronic Mail Act (“CEMA”) and the Washington  
17 Consumer Protection Act (“CPA”). Ex. 3 to Smith Decl., p. 2.

18       5. Gordon was represented by Brian Cameron and Shayne Sutherland of  
19 Cameron Sutherland PLLC and Kirk Miller of Kirk D. Miller P.S (hereinafter  
20 referred to as “Defendants”). Ex. 3. To Smith Decl. p., 2.

1       6. On November 13, 2019, Robinhood removed the action to Federal  
2 Court. Ex. 3. To Smith Decl. p., 2.

3       7. On December 10, 2019, Gordon filed an amended complaint in which  
4 he alleged that in July 2019 he received unsolicited commercial electronic text  
5 messages promoting Robinhood's brand and services. Gordon further alleged that  
6 he did not consent to the text messages. Ex. 3. To Smith Decl. p., 2.

7       8. On November 23, 2020, Gordon filed a motion for class certification.  
8 Ex. 3. To Smith Decl. p., 3.

9       9. On January 25, 2021, the Court granted the Class Certification and  
10 appointed Gordon as class representative.

11      10. On April 29, 2021, Gordon served his first discovery responses to  
12 Robinhood. Ex. 3. to Smith Decl. p., 3.

13      11. In his discovery responses, Gordon claimed that on July 23, 2019, he  
14 had received a text message from the phone number 509-990-2672 and that he did  
15 not have a relationship with the sender and that he did not provide the sender with  
16 his phone number. Ex. 3. to Smith Decl. p., 3.

17      12. In those same responses, Gordon included a screenshot of the text  
18 message which included a "nathanb4727" referral code. Ex. 3. to Smith Decl. p., 3.

19      13. Gordon further claimed in his discovery response that he received an  
20 additional text message from the phone number 406-202-3711. Gordon also  
21

1 provided a screenshot of the text message with the referral code “johnc2246.”  
2 Gordon claimed that he was uncertain if he provided the sender with his number. Ex.  
3 3. to Smith Decl. p., 3.

4       14. After receiving Gordon’s discovery responses, Robinhood immediately  
5 began to investigate the 509-990-2672 and the “nathanb4727” referral code.  
6 Robinhood was able to determine that the text came from Nathan Budke. Ex. 3. to  
7 Smith Decl. p., 3.

8       15. It was later determined that Mr. Budke was a friend of Gordon’s class  
9 counsel, Brian Cameron’s, son. It was also determined that Mr. Budke was a client  
10 of Brian Cameron and Kirk D. Miller in three separate CEMA lawsuits. Ex. 3. to  
11 Smith Decl. p., 3-4.

12       16. Robinhood also investigated texts received by Gordon dated July 24,  
13 2019 from the 406-202-3711 phone number and referral code “johnc2246.”. Ex. 3.  
14 to Smith Decl. p., 4.

15       17. Brian Cameron subsequently admitted that the text was from his  
16 brother, John. Ex. 3. to Smith Decl., p.4.

17       18. On June 25, 2021, Robinhood filed a motion to decertify the class and  
18 disqualify the class counsel arguing that plaintiff’s counsel, Brian Cameron,  
19 organized through family friends, the referral text messages to be sent. Ex. 3. to  
20 Smith Decl., p. 6.

1       19. On July 27, 2021, the District Court granted in part Robinhood's  
2 motion, decertifying the class and remanding to State Court. Ex. 4. to Smith Decl.  
3 In its Order, the Court noted "serious issues have been raised as to consent and the  
4 role that class-counsel and his brother played in initiating the transmittal of the text  
5 message that forms the bases of Plaintiff's suit. Further, the stripping of the  
6 surrounding text messages and deceptive answers to discovery provide additional  
7 grounds to disqualify plaintiff as class representative."

8       20. A subsequent motion for reconsideration was filed. In its decision on  
9 the Motion for Reconsideration, the District Court held that the decision to remand  
10 was not in error because "Such fraudulent activities that the Court expressed concern  
11 over [...], makes the initiation of this action frivolous from the start." Ex. 5. to Smith  
12 Decl., p. 7.

13       21. On October 8, 2021 the Superior Court of Spokane County entered an  
14 order dismissing the case with prejudice and ordered that "dismissal without  
15 prejudice would be pointless and futile because Plaintiff's claim is frivolous" and  
16 that "dismissal with prejudice is warranted as a sanction due to Plaintiff's frivolous  
17 claim and litigation misconduct." Ex. 3. to Smith Decl., p. 7.

18       22. On October 18, 2021, Robinhood filed a motion seeking sanctions  
19 against Cameron Sutherland, PLLC, Kirk D. Miller, P.S., Brian Cameron  
20 individually and Kirk Miller individually for its fees expended in defending against  
21

1 Gordon's frivolous claim. Ex. 3. to Smith Decl., Decl.

2       23. On March 10, 2022, the Spokane County Superior Court issued an  
 3 Order on Robinhood Motion for Attorney's Fees. In the Order, the Superior Court  
 4 held as follows:

5              Based on the uncontested evidence in the record, the  
 6 federal court determined that Mr. Gordon's case was  
 7 "frivolous from the start." The Plaintiffs requested  
 8 clarification as to whether the federal court's reference as  
 9 such was dicta, Judge Rice unequivocally removed any  
 doubt that it was *not* dicta.

10             [...]

11              Mr. Gordon and his counsel had been on notice that  
 12 Robinhood intended to seek sanctions for a frivolous  
 13 claim. The initial complaint, the amended complaint, the  
 14 motion for class certification and supporting declaration  
 15 claimed that Mr. Gordon received an "unsolicited" text  
 16 message that he "did not consent" and that he did not know  
 17 where it came from. As ultimately learned in discovery,  
 18 these statements are not true. Given the close relationships  
 19 of the people involved in this case and others, it is difficult  
 20 to believe those involved did not know that the statements  
 21 were untrue. In any event, a reasonable inquiry should  
 22 have disclosed the untrue statements. Sanctions are also  
 23 warranted under either CR 11 or CR 26(g) for the  
 24 inaccurate and misleading discovery responses.

25              Robinhood is entitled to an award of attorney fees and  
 26 statutory costs. [...]

27       Ex 6 to Smith Decl.

28       24. On July 14, 2022, The Spokane County Superior Court entered an order  
 29 granting Robinhood's Motion for Sanctions. Ex. 7 to Smith Decl.

1       25. In its order, the Court held that “The federal court’s finding that this  
 2 case frivolous from the start is sufficient, standing alone, to warrant CR 11  
 3 sanctions.” Ex. 7 p 9.

4       26. The order also included several findings of facts showing that Gordon  
 5 and Defendants signed their names to numerous filing that violate CR 11. Of note,  
 6 the Superior Court held:

7           ix. Brian Cameron and Kirk miller also represented  
 8 Plaintiff Isaac Gordon in *Gordon v. Mod Super Fast Pizza, LLC*, Spokane Cnty. Sup. Ct. Case no. 20-2-00148-32  
 9 (filed Jan 14, 2020), a putative class action involving a  
 10 refer-a-friend text message that was allegedly sent nine  
 11 minutes before the John Cameron Robinhood text.  
 12 [...] Plaintiff alleged that he received a text message from  
 13 a user who registered the name “Tom Ripley” and the  
 14 email address 19jkc77@gmail.com. ... This email address  
 15 includes the initials for John Kenneth Cameron and his  
 16 birth year, 1977, suggesting that John Cameron also sent  
 17 Plaintiff the MOD referral text message... After MOD  
 18 brought this connection to Brian Cameron’s attention,  
 19 Plaintiff voluntarily dismissed his case.

20           [...]

21           9.i. Plaintiff’s Complaint and Amended Compliant  
 22 contained statements that were not well-grounded in  
 23 fact or warranted by existing law, including several  
 24 false statements that text message Plaintiff received  
 25 was “unsolicited” and that he “did not consent” to  
 receive it.

[...]

26           9.v. After Plaintiff’s claim-manufacturing came to light,  
 27 Plaintiff’s counsel Brian Cameron signed and filed a  
 28 declaration that included demonstratable falsehoods,

1 including that, to the best of his knowledge, Plaintiff  
2 “was uncertain as to the identity of the sender of the  
3 [same] test message at issues when he responded to the  
Defendant’s discovery requests”  
4

5 10. CR 11 sanctions are further warranted because any  
6 reasonable inquiry would have involved, at a  
minimum, reviewing texts between Plaintiff and the  
7 sender. Those texts reveal that Plaintiff knew the  
8 sender, engaged in friendly text message exchanges  
both before and after the Robinhood referral text  
9 message on which Plaintiff moored his Complaint,  
and an online search for the sender’s phone number  
shows that it belonged to John Cameron, Plaintiff’s  
counsel’s brother. Counsel’s failure to conduct  
10 minimal factual investigation is sufficient to impose  
CR 11 sanctions.  
11

12 11. Further, CR 11 sanctions are necessary to deter  
13 Plaintiff and his counsel from fabricating claims in the  
future. In addition to Plaintiff’s counsel’s misconduct  
14 in the case and in *Gordon v. Mod Pizza*, discussed  
15 above, Plaintiff’s counsel Brian Cameron, Kirk  
16 Miller, and their law firms have initiated several other  
17 CEMA based punitive class actions, where plaintiffs  
18 claim to have received unsolicited commercial  
19 electronic text messages that appear similarly suspect.  
20 Several of those cases were on behalf of plaintiffs  
21 alleging that they received loyalty program text  
22 messages after visiting multiple cannabis stores on the  
23 same day [...]. The plaintiff in one of these cases  
24 testified at his deposition that Brian Cameron drove  
him from one store to the next. [...] After the  
misconduct of Brian Cameron and Kirk Miller came  
to light in these cases, Brian Cameron and/or Kirk  
Miller declined to file the previously served  
complaints, [...], or voluntarily dismissed the cases  
without prejudice, [...]. This is the same tactic  
Plaintiff and his counsel employed in this case.

1 Ex. 7. Internal citations omitted

2 27. In addition, the Order entered sanctions against Defendants:

3 [...] Further, the Court SANCTIONS Plaintiff; Brian  
4 Cameron individually; Cameron Sutherland, PLLC; Kirk  
5 Muller individually; and Kirk Miller, P.S., pursuant to CR  
6 11, in the amount of Robinhood's reasonable attorneys'  
7 fees expanded in defending this case from inception.

Ex. 7

8 28. On May 17, 2021, Cameron Sutherland submitted a Notice of New  
9 Claim or Potential Claim to ALPS regarding the Robinhood litigation. Ex. 8 to Smith  
10 Decl.

11 29. ALPS issued a PREFERRED Lawyers Professional Liability Policy of  
12 Insurance to Cameron Sutherland, policy number ALPS22052-3. The Cameron  
13 Sutherland Policy was in effect from August 30, 2020, to August 30, 2021. The  
14 Cameron Policy provides a \$100,000 each claim limit and a \$300,000 aggregate  
15 limit Ex .1

16 30. The Cameron Sutherland Policy contains the following Insuring  
17 Agreement:

18 SECTION 1 – INSURING AGREEMENTS

19 A. COVERAGE

20 Subject to the **Limit of Liability**, exclusions, conditions  
21 and other terms of this **Policy**, the **Company** agrees to  
22 pay on behalf of the **Insured** all sums (in excess of the  
23 **Deductible** amount) that the **Insured** becomes legally  
24 obligated to pay as **Damages**, arising from or in

connection with A **CLAIM** FIRST MADE AGAINST THE **INSURED** AND FIRST REPORTED IN WRITING TO THE **COMPANY** DURING THE **POLICY PERIOD**, provided that all of the following conditions are satisfied:

1. The **Claim** arises from a **Wrongful Act** that occurred on or after the **Retroactive Coverage Date** set forth in Item 2 of the **Declarations**;
- 6           [...]

7 Ex. 1. ALPS-LPL-PREFERRED (01-18) p. 2.

8

9           31. The Cameron Sutherland Policy contains the following Definitions  
10 pertinent to the above-described Insuring Agreement:

11           C. **Claim** means a demand for money or services  
12 including, but not necessarily limited to, the service of suit  
13 or institution of arbitration or alternative dispute resolution  
proceedings against the **Insured**.

14           [...]

15           G. **Damages** means any:

- 16           1. Monetary award by way of judgment or final  
arbitration, or any settlement; and

17           ...

18           **Damages** does not mean nor include any:

- 19           3. Punitive, multiple, or exemplary damages, fines,  
sanctions, penalties or citations, including, without  
limitation, any consequential or incidental damages,  
attorney's fees or costs, or pre-judgment or post-  
judgment interest resulting therefrom, regardless  
against whom the same are levied or imposed and  
regardless of whether the same were levied or imposed  
in a separate matter or proceeding;

1  
2 [...]  
3

4 Y. **Professional Services** means services or activities  
5 performed for and on behalf of the **Named Insured** or  
6 a **Predecessor Law Firm** and rendered solely to  
7 others as:

- 8 1. An **Attorney** in an attorney-client relationship on  
9 behalf of one or more clients applying the  
10 Attorney's specialized education, knowledge, skill,  
11 labor, experience and/or training, including pro  
12 bono services;

13 [...]  
14

15 BB. **Wrongful Act** means an actual or alleged:  
16

- 17 1. Act, error or omission in **Professional Services**  
18 that were or should have been rendered by the  
19 **Insured**; and  
20 2. ...  
21

22 Ex. 1. ALPS-LPL-PREFERRED (01-18) p 3-8.  
23

24 32. The Cameron Sutherland Policy contains the following fraudulent act  
exclusion:  
25

26 SECTION 3 – EXCLUSIONS  
27

28 THIS **POLICY DOES NOT APPLY TO ANY CLAIM**  
29 ARISING FROM OR IN CONNECTION WITH:  
30

- 31 A. Any dishonest, fraudulent, criminal, malicious, or  
32 intentionally harmful wrongful or harmful act, error or  
33 omission committed by, at the direction of, or with the  
34 consent of an **Insured** [...]  
35

36 [...]  
37

38 Ex. 1. ALPS-LPL-PREFERRED (01-18) p. 8.  
39

33. On October 26, 2021, Kirk D. Miller P.S. submitted a Notice of New Claim or Potential Claim to ALPS on the basis of the allegations in the Robinhood Motion for Attorney's Fees. Ex. 9 to Smith Decl.

34. ALPS issued a BASIC Lawyers Professional Liability Policy of Insurance to Kirk D. Miller, P.S., policy number ALPS24677-2. The Miller Policy was in effect from June 1, 2021, to June 1, 2022. The Miller Policy provides a \$500,000 each claim limit and a \$500,000 aggregate limit. Ex. 2.

35. The Miller Policy contains the following Insuring Agreement:

## SECTION 1 – INSURING AGREEMENTS

## A. COVERAGE

Subject to the **Limit of Liability**, exclusions, conditions and other terms of this **Policy**, the **Company** agrees to pay on behalf of the **Insured** all sums (in excess of the Deductible amount) that the **Insured** becomes legally obligated to pay as **Damages**, arising from or in connection with A **CLAIM FIRST MADE AGAINST THE INSURED AND FIRST REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD**, provided that all of the following conditions are satisfied:

1. The **Claim** arises from a **Wrongful Act** that occurred on or after the **Retroactive Coverage Date** set forth in Item 2 of the **Declarations**;  
[...]

Ex. 2. ALPS-LPL-BASIC (01-21) p. 2.

1       36. The Miller Policy contains the following Definitions pertinent to the  
2 above-described Insuring Agreement:

3  
4       C. **Claim** means a demand for money or services  
5           including, but not necessarily limited to, the service  
6           of suit or institution of arbitration or alternative  
7           dispute resolution proceedings against the **Insured**.  
8           ...  
9

10      G. **Damages** means any:

11       1. Monetary award by way of judgment or final  
12           arbitration, or any settlement; and  
13           ...  
14

15      **Damages** does not mean nor include any:  
16           ...  
17

18       3. Punitive, multiple, or exemplary damages,  
19           fines, sanctions, penalties or citations,  
20           including, without limitation, any  
21           consequential or incidental damages,  
22           attorney's fees or costs, or pre-judgment or  
23           post-judgment interest resulting therefrom,  
24           regardless against whom the same are levied  
         or imposed and regardless of whether the  
         same were levied or imposed in a separate  
         matter or proceeding;

19      X. **Professional Services** means services or  
20           activities performed for and on behalf of the  
21           **Named Insured** or a **Predecessor Law Firm** and  
22           rendered solely to others as:

23       1. An **Attorney** in an attorney-client  
24           relationship on behalf of one or more clients  
         applying the **Attorney's** specialized  
         education, knowledge, skill, labor,

experience and/or training, including pro bono services;

[...]

**Z. Wrongful Act** means an actual or alleged:

1. Act, error, or omission by the **Insured** in the performance of **Professional Services**; and

[ ... ]

Ex. 2. ALPS-LPL-BASIC (01-21) p. 3-8.

37. The Miller Policy contains the following Dishonest and Fraudulent Act

exclusion:

### SECTION 3 – EXCLUSIONS

**THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING FROM OR IN CONNECTION WITH:**

A. Any dishonest, fraudulent, criminal, malicious, or intentionally harmful **Wrongful Act** committed by, at the direction of, or with the consent of an **Insured**:

Ex. 2. ALPS-LPL-BASIC (01-21) p. 8

1 DATED this 4th day of August 2022.  
2  
3

LEATHER LAW GROUP

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the following party(ies):

Kirk D. Miller  
421 W. Riverside Ave., Ste. 660  
Spokane WA 99201  
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By: [ ] First Class Mail [X] ECF/Email

DATED this 4th day of August 2022 at Seattle, Washington.

s/ Judy Tustison  
Judy Tustison | Paralegal